

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

VINCENT O. EZEIRUAKU,	:	
	:	CIVIL ACTION
Plaintiff,	:	
	:	
v.	:	NO. 00-2225
	:	
UNITED STATES OF AMERICA and	:	
ARTHUR J. KYRIAZIS,	:	
	:	
Defendants.	:	
	:	

ROBERT F. KELLY, J.

NOVEMBER 29, 2000

MEMORANDUM

Presently before this Court are two dispositive Motions filed by the Defendants: (1) the Motion of Defendant United States of America ("the Government") for Summary Judgment, and (2) the Motion of Defendant Arthur J. Kyriazis ("Kyriazis") to Dismiss the Plaintiff's Complaint. The pro se Plaintiff, Vincent O. Ezeiruaku ("Plaintiff"), seeks damages from the Government under the Eighth Amendment Excessive Fines clause and from Kyriazis for legal malpractice. For the reasons that follow, the Defendants' Motions are granted.

I. FACTS.

On April 18, 1990, the Plaintiff was arrested by Customs Officers and criminally charged for failing to report currency in excess of \$10,000.00 in violation of 31 U.S.C. section 5316(a)(1)(A) and 5322(a). (Compl., ¶ 1.) At the time of his arrest, Plaintiff was leaving the United States while in possession of approximately \$300,000.00 in unreported currency.¹

¹The exact amount of the seized currency was \$267,522.00.

While Plaintiff's criminal case was pending, the Government filed a Complaint for Forfeiture on September 6, 1990, and the Plaintiff filed a claim for return of property. This Court stayed the forfeiture action on March 15, 1991, pending final resolution on appeal of criminal charges lodged against the Plaintiff.

On December 9, 1994, the Plaintiff filed a Motion for Voluntary Dismissal, which this Court granted by Order on January 4, 1995. A second Order was entered granting the Government's uncontested Motion for an Order of Forfeiture on April 24, 1995. Plaintiff's Motion to Set Aside the Order pursuant to Federal Rule of Civil Procedure 60(b)(6) was also denied, and the Plaintiff appealed that decision to the United States Court of Appeals for the Third Circuit ("Third Circuit") on April 24, 1997. On December 11, 1997, the Third Circuit reversed and remanded the case back to this Court for further proceedings consistent with the court's opinion. After a discovery period and a hearing on the issue of the pending motion for forfeiture, this Court issued Findings of Fact and Conclusions of Law denying Plaintiff's Motion for Summary Vacatur of the Order of Forfeiture. Specifically, this Court found that Kyriazis

testified in a convincing manner as to the agreement of Mr. Ezeiruaku to the withdrawal of the claim for the impounded cash and he gave the strategic reasons for the withdrawal of the claim.

. . .

Mr. Kyriazis testified that these reasons were reviewed with Ezeiruaku who

agreed with them. He also noted that Ezeiruaku had a high level of trust in him due to the favorable results he had obtained in the criminal case on the currency transaction report violations.

United States v. \$267,522.00 in United States Currency, NO. CIV.A.90-5773, 1998 WL 546850, at *5, *6 (E.D. Pa. Aug. 27, 1998), cert. denied, ____ S.Ct. ____, 2000 WL 1380435 (Nov. 6, 2000). On September 14, 1998, the Plaintiff appealed.

In the meantime, the Plaintiff filed a legal malpractice complaint against Kyriazis on October 27, 1997, alleging that Kyriazis "who was not authorized, neither impliedly, nor explicitly made a motion without Plaintiffs [sic] knowledge or consent, to withdraw Plaintiff's interest in the property and to dismiss the civil case as to this Plaintiff." Ezeiruaku v. Kyriazis, NO. CIV.A.97-6617, Compl. at 4, ¶ 12. Plaintiff then sought leave to amend that complaint to include allegations to

specifically include all the aspects of defendant's malpractice, to wit, that defendant's reasons, as stated in the motion to dismiss forfeiture, were legally flawed, and as such ineffective in a constitutional sense. Plaintiff points out here that since defendant purported that he did not have the legal knowledge that Plaintiff had Article III standing to challenge the property in question (\$267,522.00), which was taken from him by the U.S. Customs, [sic] that his performance amounted to malpractice. Plaintiff further points out that since defendant also did not know that Plaintiff could have challenged the forfeiture based on "excessive fines clause", that defendant has committed malpractice (ineffective assistance) in representing Plaintiff.

Id., Pl.'s Rule 15(a) Mot. Amend. Compl. at 1. Kyriazis filed a motion to dismiss the Plaintiff's complaint and the Honorable J. Curtis Joyner, by Order dated May 12, 1998, granted the motion to dismiss and denied Plaintiff's motion to amend as futile. The court stated that:

while it appears that plaintiff may be able to establish the elements of employment and negligence, it is clear that he cannot show damages given that the Third Circuit recently vacated the voluntary dismissal of plaintiff's claim and remanded the forfeiture [sic] case to the district court for the development of factual findings as to whether Mr. Kyriazis in fact acted without plaintiff's authorization. . . .Plaintiff therefore can point to no actual loss which can be said to constitute an injury at the hands of his lawyer as he may in fact obtain relief in his underlying action. Plaintiff is instead suing only on the basis of an anticipated, not an actual injury and his claims are thus not yet justiciable.

Id., May 12, 1998 Order at 2 n.1 (citations omitted). Plaintiff appealed Judge Joyner's Order on May 29, 1998. The Third Circuit addressed Plaintiff's appeals in the same decision, affirming both this Court's dismissal of Plaintiff's claim for relief under Rule 60(b) and Judge Joyner's dismissal of Plaintiff's legal malpractice claim for failure to state a claim.

In the instant lawsuit, "[a]s to the United States, Plaintiff avers that forfeiture of the entire \$300,000.00 violated his rights under the excessive fines clause of the Eight [sic] Amendment of the United States Constitution." (Compl., ¶ 1.) In addition, the Plaintiff claims that "[a]s to Attorney Arthur J. Kyriazis, his filing of a motion to withdraw interest

in the forfeiture action under the wrong legal assumption that Plaintiff had no standing, not legal defense to challenge the forfeiture action, constitutes malpractice." (Compl., ¶ 3.) The Plaintiff further claims that he "states a cause of action because now the Third Circuit Court of Appeals has affirmed the Rule 60(b) motion which was pending when Mr. Kyriazis was initially sued. Therefore, Plaintiff's loss is no longer speculative as Mr. Kyriazis represented in his defense." (Compl., ¶ 4.) Through these allegations, the Plaintiff asserts an Eighth Amendment claim for excessive fines imposed upon him. Plaintiff also asserts that Kyriazis failed to recognize and advise Plaintiff about the excessive fines issue, and therefore Kyriazis committed malpractice.

Finally, the Plaintiff seeks to amend his Complaint to assert that he did not consent to dismissal of his forfeiture action due to fear of impending harsh drug punishment, but rather he did not consent because Kyriazis "did not know of Plaintiff's 'standing' to challenge the action, and did not know about the availability of the 'Excessive Fines Clause.'" ² (Pl.'s Mem. Law Supp. Pl.'s Opp'n Mot. Dismiss at 8.) In addition, the Plaintiff wishes to add in his complaint that he had a written contract with counsel in the underlying forfeiture action. (Id.)

²The Plaintiff also asks this Court to take judicial notice that the documents he submitted in support of his Opposition to Kyriazis' Motion to Dismiss only address his lack of standing argument and lack of defense to challenge the forfeiture action. (Pl.'s Mem. Law Supp. Pl.'s Opp'n Mot. Dismiss at 8-9.)

II. STANDARD.

The purpose of a motion to dismiss for failure to state a claim is to test the legal sufficiency of the allegations contained in the complaint. Kost v. Kozakiewicz, 1 F.3d 176, 183 (3d Cir. 1993). Under Federal Rule of Civil Procedure 12(b)(6), the court must determine whether the allegations contained in the complaint, construed in the light most favorable to the plaintiff, show a set of circumstances which, if true, would entitle the plaintiff to the relief he requests. FED.R.CIV.P. 12(b)(6); Gibbs v. Roman, 116 F.3d 83, 86 (3d Cir. 1997)(citing Nami v. Fauver, 82 F.3d 63, 65 (3d Cir. 1996)). A complaint will be dismissed only if the plaintiff could not prove any set of facts which would entitle him to relief. Nami, 82 F.3d at 65 (citing Conley v. Gibson, 355 U.S. 41, 45-46 (1957)).

Conversely, "[s]ummary judgment is appropriate when, after considering the evidence in the light most favorable to the nonmoving party, no genuine issue of material fact remains in dispute and 'the moving party is entitled to judgment as a matter of law.'" Hines v. Consolidated Rail Corp., 926 F.2d 262, 267 (3d Cir. 1991) (citations omitted). "The inquiry is whether the evidence presents a sufficient disagreement to require submission to the jury or whether it is so one sided that one party must, as a matter of law, prevail over the other." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249 (1986). The moving party carries

the initial burden of demonstrating the absence of any genuine issues of material fact. Big Apple BMW, Inc. v. BMW of North Am., Inc., 974 F.2d 1358, 1362 (3d Cir. 1992), cert. denied, 507 U.S. 912 (1993). Once the moving party has produced evidence in support of summary judgment, the nonmovant must go beyond the allegations set forth in its pleadings and counter with evidence that demonstrates there is a genuine issue of fact for trial. Id. at 1362-63. Summary judgment must be granted "against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). While pro se complaints are entitled to liberal construction, the plaintiff must still set forth facts sufficient to survive summary judgment. Shabazz v. Odum, 591 F. Supp. 1513 (1984)(citing King v. Cuyler, 541 F. Supp. 1230, 1232 n.3 (E.D. Pa. 1982)).

III. DISCUSSION.

A. Government's Motion for Summary Judgment.

In its Motion for Summary Judgment, the Government contends that Plaintiff's current claims are the precise issues Plaintiff raised in his Rule 60(b)(6) Motion for relief from forfeiture, i.e. that the forfeiture violates the Excessive Fines clause of the Constitution and that his attorney dismissed his forfeiture claim without his permission. According to the Government, the Third Circuit's finding that circumstances did

not warrant granting the Plaintiff relief should be res judicata and bar the Plaintiff's present complaint. For support, the Government cites CoreStates Bank, N.A. v. Huls America, Inc., 176 F.3d 187, 194 (3d Cir. 1999), in which the Third Circuit defined claim preclusion as requiring "(1) a final judgment on the merits in a prior suit involving; (2) the same parties or their privities; and (3) a subsequent suit based on the same cause of action." (Government's Mem. Law Supp. Mot. Summ. J. at 4)(citing Id. (citations omitted)).

The Government notes that, after an evidentiary hearing, this Court addressed the merits of Plaintiff's forfeiture claim, finding that his attorney dismissed that claim with his consent, which is the same allegation raised by the Plaintiff in the instant action. (Government's Mem. Law Supp. Mot. Summ. J. at 4-5.) Thus, the Government argues, the Plaintiff should be estopped from relitigating these same issues a second time. (Id. at 5)(citation omitted). With respect to Plaintiff's Excessive Fines clause argument, the Government claims that the Third Circuit already ruled that the Supreme Court decision on which Plaintiff relies, United States v. Bajakajian, 524 U.S. 321 (1998), need not be given retroactive effect in the context of a motion for relief under Federal Rule of Civil Procedure 60(b)(6). (Government's Mem. Supp. Mot. Summ. J. at 5.)

The Plaintiff opposes the Government's Motion by filing a Cross-Motion for Summary Judgment. He attempts to distinguish

his current lawsuit from both prior lawsuits by contending that this case raises a federal question as to the constitutionality of the forfeiture of his money.³ This case, according to the Plaintiff, is different from the prior forfeiture proceeding in which he appealed a denial of a Rule 60(b)(6) motion. The Plaintiff contends that, on appeal, "[t]he [Third Circuit] only ruled that [his] Rule 60(b)(6) motion [wa]s not appropriate for relief." (Pl.'s Opp'n Government's Mot. Summ. J. at 2.) Plaintiff contends, furthermore, that in the prior forfeiture case, he raised "the Excessive Fines clause argument in his Rule 60(b)(6), which the court did not reach [on] its **merits** because of the vehicle it was raised under, to wit, Rule 60(b)(6)." (Id.) The Plaintiff opines that the Third Circuit did not feel that a Rule 60(b)(6) Motion was the appropriate avenue under which the constitutional issue of violation of the Excessive Fines Clause should be brought. Consequently, the Plaintiff claims that his current action for relief against the Government is proper.

This Court is not persuaded by either the Plaintiff's contention that his present claim differs from his previous claim or that the Third Circuit's decision was limited to a finding that a Rule 60(b)(6) Motion was not an appropriate avenue for relief of his claim. (Pl.'s Opp'n Government's Mot. Summ. J. at

³Plaintiff directs this Court to his Complaint. He has filed this case pursuant to 28 U.S.C. section 1331, the United States Code provision which provides that this Court has original jurisdiction over cases involving federal questions.

2.) To the contrary, in its unpublished decision, the Third Circuit concluded that the Plaintiff did not challenge this Court's finding that he consented to the voluntary dismissal of his forfeiture challenge. See United States v. \$267,522.00 in U.S. Currency, 215 F.3d 1316, slip op. at 5. Instead, according to the court, the Plaintiff argued that the forfeiture itself violated the Excessive Fines clause because this District Court found Plaintiff's consent was a knowing and voluntary waiver of his right to a jury trial. Id. at 5-6. The court further stated that Plaintiff's Excessive Fines clause defense was available to him when he voluntarily dismissed his claim and affirmed this Court's rejection of Plaintiff's contention that Bajakajian retroactively applied to Plaintiff's claim. Id. at 6. In Bajakajian, the Supreme Court invalidated a total forfeiture as a violation of the excessive fines clause. United States v. Bajakajian, 524 U.S. 321 (1998). The Third Circuit stated that the Plaintiff's appeal could not "be viewed as an appeal of the underlying order of forfeiture." United States v. \$267,522.00 in U.S. Currency, 215 F.3d 1316, slip op. at 5 n.1.

Plaintiff misinterprets the Third Circuit's analysis of his Excessive Fines clause argument in an attempt to essentially re-establish his assertion of lack of consent and thus, his Eighth Amendment Excessive Fines clause claim. In a footnote in the section of the circuit court's opinion discussing Plaintiff's legal malpractice claim, the court explains:

Ezeiruaku also sought to amend his legal

malpractice claim to include a charge that his attorney failed to raise an Excessive Fines clause argument, which the District Court denied as futile at that time. See Ezeiruaku, C.A. No. 97-6617, slip op. at 2 n.1. Although the District Court's rejection of this defense was not essential to its judgment in the forfeiture case, Ezeiruaku is nonetheless collaterally estopped from asserting this argument because it is subsumed in the lower court's conclusion that he consented to the dismissal. Ezeiruaku failed to allege that it was the lack of this defense, and not the threatened punishment for his drug charge, that prompted his consent. Thus, the District Court's denial of his motion to amend remains proper.

Id. at 8 n.3 (emphasis added). In order for collateral estoppel to apply, "(1) the same issue was decided in a prior case (2) in which there was a final judgment on the merits and (3) the party against whom collateral estoppel was asserted was a party in the prior case (4) who had a full and fair opportunity to litigate the issue and (5) the prior determination was essential to the judgment." Id. at 8 (citation omitted). The circuit court recognized this Court's forfeiture case holding that the Plaintiff consented to the dismissal and, because he fully and fairly litigated the essential issue of lack of consent, he was collaterally estopped from asserting that defense. Id. Although the court recognized that this Court's rejection of the Excessive Fines clause argument was not essential to its judgment in the forfeiture case, the court stated that the Plaintiff was collaterally estopped from asserting that argument. Id. In conformance with the Third Circuit's decision, this Court rejects Plaintiff's current Excessive Fines clause claim and grants the

Government's Motion for Summary Judgment.

B. Kyriazis' Motion to Dismiss.

Plaintiff's former attorney in the forfeiture proceeding, Kyriazis, brings a Motion to Dismiss the Plaintiff's Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6).⁴ In his Motion, Kyriazis claims that the Plaintiff cannot currently maintain a malpractice action against him because it is barred by the Third Circuit's decision. In addition, Kyriazis claims that Plaintiff's current malpractice claims are barred by the applicable statute of limitations.

Plaintiff contends in his Complaint that "Plaintiff states a cause of action because now the Third Circuit Court of Appeals has affirmed the Rule 60(b) motion which was pending when Mr. Kyriazis was initially sued. Therefore, Plaintiff's loss is no longer speculative as Mr. Kyriazis represented in his defense." (Compl., ¶ 4.) The Plaintiff further claims in his opposition to Kyriazis' Motion that "the prior judgment did not cover all the facets of the 'excessive fines clause' argument of Plaintiff's malpractice claim and therefore does not bar his recovery." (Pl.'s Mem. Law Supp. Pl.'s Opp'n Mot. Dismiss at 3.)

Kyriazis claims that Plaintiff is barred from litigating claims that were or could have been brought in a prior action which resulted in a final judgment on the merits.

⁴Because it is necessary to review additional information outside of the Complaint submitted by both Kyriazis and the Plaintiff, this Court will treat Kyriazis' Motion as a Motion for Summary Judgment. See supra, n.2 & Section II.

Therefore, he contends that the Plaintiff is not entitled to a second opportunity to litigate the same legal malpractice issues which he already litigated or had a reasonable opportunity to litigate. (Kyriazis' Mem. Law Supp. Mot. Dismiss at 3)(citing Lubrizol Corp. v. Exxon Corp., 929 F.2d 960, 964 (3d Cir. 1991)). In response, the Plaintiff claims that his current malpractice claim is based upon his counsel's statement that he lacked an available defense in the forfeiture action. (Pl.'s Mem. Law Supp. Pl.'s Opp'n Mot. Dismiss at 4.)

A careful review of the Third Circuit's decision reveals that the court noted this Court's conclusion that the Plaintiff consented to the dismissal of the forfeiture case and because the Plaintiff was the party who "fully and fairly litigated this essential issue, he is collaterally estopped from asserting lack of consent." See United States v. \$267,522.00 in U.S. Currency, 215 F.3d 1316, slip op. at 8. The Third Circuit recognized that the Plaintiff previously attempted to amend his first malpractice claim to include a charge that his attorney failed to raise an Excessive Fines clause argument. Id. at 8 n.3. The Court stated that Plaintiff was collaterally estopped from asserting that argument because that argument was subsumed in this Court's conclusion that he consented to the dismissal. Id. In addition, the circuit court stated that "the record indicates that it was for strategic reasons associated with the drug charges Ezeiruaku faced, and not the lack of standing or of any other defense, that prompted Kyriazis to recommend dismissing

the forfeiture claim." Id. at 6. Consequently, the Plaintiff is barred from using Kyriazis' alleged failure to raise the Excessive Fines clause defense and the lack of standing defense to show any alleged malpractice on Kyriazis' part. Accordingly, the Plaintiff's legal malpractice claim against Kyriazis is dismissed.⁵

An Order follows.

⁵Because this Court has found that Plaintiff cannot maintain a legal malpractice claim against Kyriazis as a result of Third Circuit precedent, the statute of limitations issue raised by Kyriazis will not be addressed.

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VINCENT O. EZEIRUAKU,	:	
	:	CIVIL ACTION
Plaintiff,	:	
	:	
v.	:	NO. 00-2225
	:	
UNITED STATES OF AMERICA and	:	
ARTHUR J. KYRIAZIS,	:	
	:	
Defendants.	:	
	:	

ORDER

AND NOW, this 29th day of November, 2000, upon consideration of the Motion of Defendant Arthur J. Kyriazis to Dismiss the Plaintiff's Complaint, and the Motion of Defendant United States of America for Summary Judgment, and the Plaintiff's Responses thereto, it is hereby ORDERED that the Defendants Motions are GRANTED and Plaintiff's Complaint is hereby DISMISSED.

BY THE COURT:

Robert F. Kelly,	J.
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